

Food Machinery developed the new coke process primarily to furnish satisfactory coke to its Pocatella, Idaho, furnaces.

United States Steel has a steel plant in Utah.

SUBCOMMITTEE MEETING DURING SENATE SESSION ON MONDAY, JULY 31, 1961

Mr. PASTORE. Madam President, I ask unanimous consent that the Subcommittee on Labor of the Committee on Labor and Public Welfare be permitted to meet during the session of the Senate on Monday, July 31, for the purpose of taking testimony from Secretary of Labor Arthur Goldberg, Senator GORDON ALLOTT, and other persons, on proposed legislation intended to strengthen the Welfare and Pension Plans Disclosure Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

FACILITIES OF CONDUCT OF BUSI- NESS OF THE FEDERAL COMMUNI- CATIONS COMMISSION

The Senate resumed the consideration of the bill (S. 2034) to amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions.

Mr. PASTORE. Madam President, what is the pending business?

The PRESIDING OFFICER. The pending business is Calendar No. 550, S. 2034.

Mr. PASTORE. Madam President, the purpose of the bill is to modify the Communications Act of 1934 so that the Federal Communications Commission will be able to make better use of its own time, and more effective use of its experienced and technically qualified personnel to handle its workload of adjudicatory cases with greater speed and efficiency than is presently possible. These changes in the law should enable the Commission to devote more of its time to major matters of policy and planning and to the more significant cases—primarily those involving issues of general communications importance.

This bill is an outgrowth of Reorganization Plan No. 2 which affected the Federal Communications Commission and which was transmitted by the President to the Congress and disapproved by the House of Representatives on June 15, 1961. Hearings were held on the reorganization plan by my Subcommittee on Communications and it is fair to say that during the hearings everyone agreed that the objectives of the plan were desirable and meritorious but objections were raised on the ground that it amended substantive provisions of the Communications Act and the proper way to do this would be through specific legislation. At that time I urged the Commissioners of the FCC to resolve their differences and to submit immediately a legislative proposal that would bring about the desired objectives of the reor-

ganization plan. S. 2034 was the result of this cooperative effort. Hearings were held on June 28, 1961, at which time the members of the FCC and other witnesses appeared.

Specifically, S. 2034, as reported by the Commerce Committee, would authorize the Commission to delegate any of its functions, including those of adjudicatory cases, to a panel of Commissioners, an individual Commissioner, or employee or employee board. The decision of the authority to whom the matter was delegated could then be reviewed in whole or in part by the Commission at any time either upon its own initiative, or upon an application for review filed by a person aggrieved by the decision. The filing of an application for review is made a condition precedent to judicial review of a delegated decision.

This bill would also repeal the provisions of section 5(c) of the Communications Act relating to the review staff. Under the present provisions of the act the review staff, even though it has no other function than assisting the Commission in adjudicatory cases, is precluded from making any recommendations to the Commission. This restriction is wasteful and inefficient since it deprives the Commission of the full assistance of which this review staff is capable and requires a two-step procedure of instructions and draft order even as to the most routine interlocutory matter. The repeal of this restrictive provision should contribute to speedy action on the part of the Commission by giving them the full services of their expert staff.

The bill also makes extensive revisions in section 409 of the Communications Act which section contains general provisions relating to adjudicatory proceedings.

First, it modifies the act so as to permit the Commission to assign adjudicatory cases to one or more Commissioners who are presently prohibited from conducting such hearings.

Second, it gives the right to a party to file exceptions which must be passed upon by the Commission or a designated authority within the Commission such as a panel of Commissioners or an employee board.

Third, section 409 would be so amended as to make oral argument discretionary rather than mandatory. This does not mean that oral argument will no longer be available. On the contrary, the Commission has assured the committee that this valuable procedure would still be greatly employed by the Commission or the panel of Commissioners or employee boards but instead the Commission would now have the discretion to allow such arguments in instances in which in its judgment that would serve no useful purpose—for example, in the case of a frivolous appeal, or one having no merit, or one designed largely to gain delay. Every other Federal regulatory agency presently has such discretion. The Federal Communications Commission should be given similar flexibility.

Fourth, section 409 is modified so as to eliminate the provision which pro-

hibits the FCC from fully utilizing the services of the members of the Office of General Counsel, the Office of Chief Engineer, or the Office of Chief Accountant, in their consideration of adjudicatory cases.

This restrictive provision has deprived the Commission of the full and effective services of its expert and qualified personnel. As amended, section 5(c) of the Administrative Procedure Act will apply, and staff persons who had engaged in the performance of investigative or prosecutory functions in a case or in a factually related case would be precluded from participating in the intra-Commission discussions leading to the issuance of a decision. Virtually all the administrative agencies function in this fashion. The provisions of section 409 that prevented the personnel of the Offices of General Counsel, the Chief Engineer, or the Chief Accountant from doing that, is peculiar to the FCC. It is clearly wasteful to cut off the Commission in adjudicatory cases from the valuable assistance of its chief legal, engineering, and technical officers if those officers had no investigative or prosecutory connection with the case. This bill will remedy that situation.

I wish to conclude by saying that the public interest will be served by the enactment of this proposed legislation. The strengthening of the Communications Act provided by the granting to the Commission of additional authority to delegate its adjudicatory functions should be of material assistance to the Commission in increasing its efficiency, cutting down on its backlog of pending cases, and permitting the Commissioners to concentrate on the more important and far-reaching policy problems with which they are faced such as the one involving a space satellite communications system.

Madam President, I ask unanimous consent to have printed at this point in the RECORD a more detailed, section-by-section explanation of the bill as reported by the committee.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF S. 2034

1. Section 1 would repeal the provisions of section 5(c) of the Communications Act, relating to the review staff. Under these provisions, the review staff, even though it has no other functions than assist the Commission in adjudicatory cases, is nevertheless precluded from making any recommendations to the Commission. This restriction is wasteful and inefficient, since it deprives the Commission of the full assistance of which this review staff is capable, and requires the two-step procedure of instructions and draft order even as to the most routine interlocutory matters. The repeal of these unduly restrictive provisions should contribute to speedier action, without depriving parties of any rights in view of the continuing safeguards of section 409(c) of the Communications Act and section 5(c) of the Administrative Procedure Act.

2. Section 2 would permit the Commission to delegate any of its functions, including those in adjudicatory cases, to a panel of Commissioners, or individual Commissioner or employees, or an employee board (with the exception that adjudicatory hearings could only be conducted by one of the three

authorities specified in sec. 7(a) of the Administrative Procedure Act). The decision of the authority to whom the matter was delegated could then be reviewed, in whole or in part, by the Commission, either upon its own initiative or upon an application for review filed by a person aggrieved by the decision, but the Commission could deny such application without assigning any reasons therefor.

The filing of an application for review is made a condition precedent to judicial review of a delegated decision; and the application cannot rely on questions of fact or law upon which the delegated authority has been afforded no opportunity to pass. In this way, the case will be presented to the Commission (and if the application is denied, to the courts) with a ruling on every issue, and the Commission will have an opportunity to review the decision before the matter goes before the courts. The statutory language also makes clear that the application for review procedure is inapplicable to the initial decision in adjudicatory cases; such decisions are to be reviewed solely by the filing of exceptions (as provided in sec. 409(b)).

These provisions will give the Commission much needed authority, now withheld under present section 5(d)(1), to employ panels of Commissioners or employee boards to pass on adjudicatory cases. Under the present law, it is necessary for the full Commission to hear every adjudicatory case, including such matters as fishing boat suspensions or the most routine aural broadcast cases. With the new authority the Commission will be able to concentrate on the important cases involving major policy or legal issues, and the hearings of all cases by some authority within the agency should be substantially expedited.

3. Section 3 would revise section 405, relating to petitions for rehearing, so as to reflect the above-described statutory scheme. As revised, the section would permit an aggrieved party to file a petition for rehearing only to the authority making the decision, that is, to the Commission, if it made the decision, or to the designated authority under the new 5(c)(1), if it issued the decision.

4. Section 4 would make extensive revisions in section 409, which contains general provisions relating to adjudicatory proceedings. First, the restriction in the present subsection (a) that the hearing shall be conducted only by the Commission or one or more examiners is dropped. This means the Commission, like other agencies, will be governed by the provisions of section 7(a) of the Administrative Procedure Act and therefore, that one or more Commissioners may also conduct the hearing.

Second, subsection (b) would retain the right of a party to file exceptions, which must be passed upon by the Commission or a designated authority within the Commission (e.g., a panel of Commissioners or employee board). It would eliminate the last sentence of the present section 409(b) as unnecessary in view of the provisions of section 8 of the Administrative Procedure Act; the first sentence of the present provision is retained as the new section 409(a).

Further, subsection (b) would change the existing law by making oral argument discretionary rather than mandatory. This does not mean that oral argument will no longer be available. On the contrary, it is expected that this valuable procedure would still be greatly employed by the Commission or the panels or employee boards. But the Commission would now have the discretion not to allow such argument in those instances where in its judgment it would serve no useful purpose, as for example, in the case of a frivolous appeal or one having no merit or designed largely to gain delay. Every other major Federal regulatory agency

presently has such discretion; clearly, the Commission should be given similar flexibility.

Third, the provisions of subsection (c) relating to ex parte presentations by persons who have participated in the presentation or preparation for presentation of the case at the hearing or review stage would be retained. But the separation of functions provisions of the present section 409(c) would be deleted, and the provisions of section 5(c) of the Administrative Procedure Act would be made applicable to the Commission, including Commission proceedings to determine initial licenses. Specifically, the law would be changed as follows:

(1) There would be eliminated the provisions in present section 409(c)(2) and (3) prescribing in adjudicatory cases any staff contact with the Commission by the Offices of General Counsel, the Chief Engineer, or Chief Accountant. Instead, under the standard of section 5(c) of the Administrative Procedure Act, only staff persons who had engaged in the performance of investigative or prosecuting functions in the case or a factually related one would be precluded from participating in the intra-Commission discussions leading to the issuance of the decision. This standard being directed squarely to the fairness problem involved, is obviously the correct one. Virtually all the major administrative agencies have functioned well under it. There is thus every reason to permit the Commission to return to it. For it is clearly wasteful to cut off the Commission in an adjudicatory case from the valuable assistance of its chief legal and engineering officers, where these officers have had no investigative or prosecutory connection with the case (or a factually related one).

(2) Under section 5(c) of the Administrative Procedure Act, the hearing officer would be precluded from consulting any person or party on any fact in issue but would be free to consult with other examiners or appropriate staff members (see (1) above) on legal or technical questions. Permitting such consultation should result in improving the quality of initial decisions and in expediting their preparation. (See Attorney General's Manual on the Administrative Procedure Act, pp. 54-55.) Significantly, examiners in other agencies are governed by the standard in section 5(c) of the Administrative Procedure Act. There is clearly no reason for proscribing appropriate consultation in the case of the examiners of this one agency.

Finally, subsection (d) provides that to the extent the foregoing provisions or those of the new section 5(c) conflict with the provisions of the Administrative Procedure Act, the latter are superseded. This is made necessary by the statement in section 12 of the Administrative Procedure Act that no subsequent legislation shall be deemed to supersede the provisions of the act "except to the extent that such legislation shall do so expressly."

This legislation clearly goes beyond the Administrative Procedure Act by making (1) the proscription against ex parte presentations by parties applicable to any case of adjudication (including, therefore, Commission staff members who are parties in adjudicatory cases involving the validity of application of past rates, facilities, or practices of public utilities or carriers) and (2) the separation of functions provisions of section 5(c) applicable to Commission initial license proceedings. Section 409(b) would also appear to go beyond the provisions of section 8 of the Administrative Procedure Act by bestowing on the parties the right to file exceptions to the initial decision. Finally, it has been argued that a ruling on the merits of every pleading filed in the case is required under sections 6(d) and 8(b) of the Administrative Procedure Act.

Whatever the validity of this argument, section 409(d) of the bill, by its explicit reference to the new section 5(c) which authorizes denial without assigning reasons of the application for review of a delegated decision, obviates any question on this score.

5. Section 5 provides that all cases set for hearing by the Commission prior to the date of enactment shall continue to be governed by the second sentence of the present section 409(b). This means that in such cases the Commission must hear oral argument upon the request of the parties.

6. Section 5(e) of the Communications Act of 1934, as amended, would be redesignated as section 5(d).

Mr. PASTORE. Madam President, for the information of the Senators who are in the Chamber at this time, let me say that in this bill we are by legislative action substantially accomplishing the objective of Reorganization Plan No. 2, which was rejected by the House, but with one major exception: this bill eliminates the feature contained in the reorganization plan, which gave to the Chairman of the Commission authority to assign members of the Commission or employees or individual Commissioners or an employee board or a hearing officer to a particular case. We have eliminated that particular feature, which was characterized as czarism by some who were opposed to it. That was never my understanding of it, but that objection was made to it.

The Chairman of the Commission, who appeared before our committee, said he did not care too much to have that authority, and was not asking for it. So that feature was deleted. Such a provision is contained in this measure; and that acceptable to all the Commissioners.

The objectives of this measure were generally endorsed by all the witnesses, including the Commissioners, who appeared before our subcommittee.

I think this measure provides for a vast improvement over the present procedures. It recognizes and preserves the basic rights of all the litigants; and I say to the Members of the Senate that this measure is a vast improvement over other similar proposals and should be passed by the Senate, in my opinion, as it would serve the public interest.

Mr. LAUSCHE. Madam President, will the Senator from Rhode Island yield?

Mr. PASTORE. I yield.

Mr. LAUSCHE. Does the bill as now before the Senate place on the Commission any limitation in regard to the delegation of obligations and duties to subordinates and other members of the Commission?

Mr. PASTORE. If the distinguished Senator from Ohio means to ask whether we have classified the caliber of employees or employee boards to whom this responsibility can be assigned or delegated, the answer is that we did in the report, but we did not do so in the body of the bill itself. But that issue has since been raised; and I do not think there is any objection by anyone to including such a provision. In fact, I understand that the Senator from Illinois [Mr. DIRKSEN], the minority leader, will propose an amendment which will make that language a part of the bill, rather

than a part of the report; and it will require that whenever a case is assigned to an employee or to any board of employees, that employee or board of employees in substance must have the same or higher qualifications as those of a hearing officer or individual whose action is being reviewed.

Mr. LAUSCHE. I see. Then the purpose of the language written into the report was in a measure to make certain that the delegation of certain quasi-judicial functions would not be made to any subordinate officer, at the whim of the Commission?

Mr. PASTOR. That is true. I do not think the Commission would ever have dared to do something of that sort in the public interest; but this arrangement guarantees that the Commission cannot do it.

Mr. LAUSCHE. I thank the Senator from Rhode Island.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

Mr. MANSFIELD. Madam President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the committee amendments.

The amendments were agreed to, as follows:

On page 2, line 3, after the word "by", insert "published", and in the same line, after the word "or", insert "by"; in line 10, after the word "order", strike out "Nothing in this subsection shall modify the provisions of section 7(a) of the Administrative Procedure Act," and insert "Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, of any hearing to which such section 7(a) applies."; after line 16, to insert:

"(2) As used in this subsection (c) the term 'order, decision, report, or action' does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

At the beginning of line 21, strike out "(2)" and insert "(3)"; in the same line, after the word "decision", strike out "or", and in the same line, after the word "report", insert "or action"; in line 22, after the word "or", strike out "other action"; in line 23, after the word "in", strike out "subsection" and insert "paragraph", and in the same line, after the amendment just above stated, strike out "(3)" and insert "(4)"; on page 3, at the beginning of line 3, strike out "(3)" and insert "(4)"; in line 4, after the word "decision", strike out "or", and in the same line, after the word "report", insert "or action"; in line 5, after the word "the", strike out "Commission" and insert "Commission,,"; in line 8, after the word "under", strike out "subsection" and insert "paragraph"; at the beginning of line 12, strike out "(4)" and insert "(5)"; in line 16, after the word "the", insert "panel of Commissioners"; in line 17, after the word "Commissioner", strike out "panel of Commissioners,,"; at the beginning of line 20, strike out "(5)" and insert "(6)"; in line 22, after the word "decision", strike out "or report made, or other action taken" and insert "report, or action, or it may order a rehearing upon such order, decision, report, or action"; on page 4, at the beginning of line 1, strike out "(6)" and insert "(7)", and

in the same line, after the word "review", insert "under this subsection"; in line 3, after the word "decision", strike out "or report made or other action taken" and insert "report, or action made or taken pursuant to a delegation under paragraph (1)"; at the beginning of line 11, strike out "(7)" and insert "(8)", and in the same line, after the word "The", strike out "secretary" and insert "Secretary"; in line 15, after the word "to", strike out "subsection" and insert "paragraph"; in line 16, strike out "section" and insert "subsection"; after line 18, insert:

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At the beginning of line 20, insert "Sec. 405.", and in the same line, after the word "After", strike out "a decision, order, or requirement" and insert "an order, decision, report, or action"; in line 21, after the word "made", insert "or taken"; in line 22, after the word "or", insert "by any"; in line 23, after the word "Commission", insert "pursuant to a delegation"; on page 5, line 2, after the word "making", strike out "the decision, order, or requirement" and insert "or taking the order, decision, report, or action"; in line 7, after the word "appear", strike out "Petitions" and insert "A petition"; in line 9, after the word "of", strike out "any decision, order, or requirement" and insert "the order, decision, report, or action"; in line 12, after the word "any", strike out "decision, order, or requirement" and insert "order, decision, report or action"; in line 17, after the word "such", strike out "decision, order, or requirement" and insert "order, decision, report, or action"; in line 20, after the word "such", strike out "order, or requirement" and insert "order, decision, report, or action"; on page 6, line 6, after the word "Commission", insert "or designated authority within the Commission"; in line 10, after the word "establish", insert "except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing"; in line 18, after "402(b)", insert "in any case"; in line 21, after the word "in", strike out "any" and insert "such proceeding or"; at the beginning of line 22, strike out "decision, order, or requirement" and insert "order, decision, report, or action"; in line 23, after the word "made", insert "or taken"; on page 7, line 8, after the word "for", insert "a", and in the same line, after the word "Commission", strike out "the hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act and such other rules as the Commission may prescribe not inconsistent therewith." and insert "the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision"; in line 19, after "(b)", strike out "In such cases, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to such initial, tentative, or recommended decision, which shall be passed upon by the Commission or the authority to whom the matter may have been delegated under section 5(c)(1)." and insert "In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority with-

in the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(c)(1)."; on page 8, line 9, after "(c)", insert "(1)"; in line 11, after the word "for", insert "a", and in the same line, after the word "person", strike out "except to the extent required for the disposition of ex parte matters as authorized by law, shall directly or indirectly, make any presentation respecting such case to the hearing officer, unless upon notice and opportunity for all parties to participate: *Provided*, That a Commissioner conducting the hearing shall be permitted to consult with his assistants and to participate, without restriction because of his conduct of the hearing, with the Commission upon review of the case or any other matter: *Provided further*, That examiners shall be permitted to consult with other examiners on questions of law. No person except to the extent required for the disposition of ex parte matters as authorized by law, and except for officers, employees or agents of the Commission not engaged in the performance of investigative or prosecuting functions for the Commission in such case or a factually related case, shall directly or indirectly make any presentation respecting such case to the Commission or designated authority within the Commission, unless upon notice and opportunity for all parties to participate." and insert "who has participated in the presentation or preparation for presentation of such case at hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or, upon review, to the Commission or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 5(c)(1), unless upon notice and opportunity for all parties to participate."; on page 9, after line 15, insert:

"(2) The provision in subsection (c) of section 5 of the Administrative Procedure Act which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

In line 23, after "section 5(c)," strike out "(4)"; on page 10, line 1, after "Section 5 (c)", strike out "(4)"; in line 2, after the word "of", strike out "the" and insert "that"; in line 10, after the word "Act," strike out "set for hearing" and insert "designated"; in line 11, after the word "Commissioner" insert "for hearing," and after line 12, insert a new section, as follows:

SEC. 6. Section 5(e) of the Communications Act of 1934, as amended, is hereby designated section 5(d).

So as to make the bill read:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 5 of the Communications Act of 1934, as amended, is hereby repealed.

"Sec. 2. Subsection (d) of section 5 of the Communications Act of 1934, as amended, is amended to read as follows:

"(c)(1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying reporting, or otherwise acting as to any work, business, or matter, and may at any time amend, modify, or rescind any such rule or order. Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other

than persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, of any hearing to which such section 7(a) applies.

"(2) As used in this subsection (c) the term 'order, decision, report, or action' does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

"(3) Any order, decision, report, or action made or taken, pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

"(4) Any person aggrieved by any such order, decision, report, or action, may file an application for review by the Commission, within such time and in such manner as the Commission shall prescribe. The Commission shall have authority on its own initiative to order any matters delegated under paragraph (1) before it for review on such conditions as it shall prescribe and shall make such orders therein, consistent with law, as shall be appropriate.

"(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of Commissioners, individual Commissioner, employee board, or individual employee, has been afforded no opportunity to pass.

"(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

"(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

"(8) The Secretary and seal of the Commission shall be the secretary and seal of the panel of the Commission, each individual Commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection."

"Sec. 3. Section 405 of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"REHEARINGS

"Sec. 405. After an order, decision, report, or action has been made or taken in any proceeding by the Commission or by any designated authority within the Commission pursuant to a delegation under section 5(c) (1), any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 5(c) (1), in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. A petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or post-

pone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b) in any case, shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order."

"Sec. 4. Section 409 (a), (b), (c), and (d) of the Communications Act of 1934, as amended, are amended to read as follows:

"(a) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

"(b) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(c) (1).

"(c) (1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or, upon review, to the Commission or to any authority within the Commission to whom, in such case, review functions have

been delegated by the Commission under section 5(c) (1), unless upon notice and opportunity for all parties to participate.

"(2) The provision in subsection (c) of section 5 of the Administrative Procedure Act which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

"(d) To the extent that the foregoing provisions of this section and section 5(c) are in conflict with the provisions of the Administrative Procedure Act, such provisions of this section and section 5(c) shall be held to supersede and modify the provisions of that Act."

"Sec. 5. Notwithstanding the foregoing provisions of this Act, the second sentence of subsection (b) of section 409 of the Communications Act of 1934 (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act, shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) designated by the Federal Communications Commission for hearing by a notice of hearing issued prior to the date of the enactment of this Act.

"Sec. 6. Section 5(e) of the Communications Act of 1934, as amended, is hereby designated section 5(d)."

Mr. PASTORE. Madam President, I understand that the Senator from Illinois [Mr. DIRKSEN] wishes to propose some amendments.

Mr. LAUSCHE. Madam President, will the Senator from Rhode Island yield again?

Mr. PASTORE. I yield.

Mr. LAUSCHE. I do think it advisable to write into the bill a specific provision of the type referred to a moment ago. I recognize that this Commission, in exercising sound discretion, would never make a delegation to an irresponsible subordinate. But we have learned through experience that it is better to write such provisions into the law.

Mr. PASTORE. Madam President, I offer the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 4, in line 16, it is proposed to strike out the closed quotation marks and, after line 16, to insert the following:

"(9) In any case in which the functions delegated by the Commission under paragraph (1) to an employee board or individual employee consist of reviewing the actions of any other employee or employees of the Commission (including examiners appointed as provided in section 11 of the Administrative Procedure Act), the Commission shall delegate such functions only to employees who by reason of their training, experience, competence, and character are especially qualified to perform such review functions, and, insofar as practicable, only to employees who are in a grade classification or salary level equal to or higher than the employee or employees whose actions are to be reviewed.

Mr. PASTORE. Madam President, this amendment will accomplish the objectives stated by the distinguished Senator from Ohio, and thus will make such a provision part of the law; and, as a result, any delegation of authority in adjudicatory proceedings or hearings

must be delegated to an employee—or board of employees whose status is equal to or higher than that of a hearing officer or individual whose action is being reviewed.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. DIRKSEN. Madam President, I should like to ask the distinguished chairman of the subcommittee a question with respect to applications for review. Would the denial of such an application for review be considered in two lights: First, merely that the Commission did not want to review the decision, on the ground that it was inconsequential and unimportant; second, whether the denial would be regarded as an affirmation of the decision of the case on its merits.

Mr. PASTORE. The only reason or purpose for denial of review is to afford the petitioner who requested the review an opportunity to make a record which he can use in going to court. In the opinion of the Senator from Rhode Island, it would make little difference as to what reason was in the minds of the Commission when it denied the review. The moment the review is denied, the record stands as it is, the litigant is given an opportunity to go to court. The Commissioners would be held strictly responsible for whatever was done on the record. I do not think we need have any fear or apprehension in that regard, for the reason that we have done nothing which would infringe upon due process with respect to a litigant.

Mr. DIRKSEN. There has been some discussion with the distinguished Senator from Rhode Island, and following that discussion, I offer an amendment, which I understand is acceptable to the subcommittee.

Mr. PASTORE. Yes.

The PRESIDING OFFICER. The amendment offered by the Senator from Illinois will be stated.

The LEGISLATIVE CLERK. It is proposed, immediately preceding the period in line 8, page 8, to add the following: "Provided, however, That such authority shall not be the same authority which made the decision to which the exception is taken."

Mr. DIRKSEN. Madam President, the amendment is very simple and has for its purpose only that, when there has been a decision, and then a request for a review, the same people, the same employees, the same group, or the same Commissioners who had passed on it in the original instance would not for the second time pass upon the review application, because a litigant would actually be in the same court, and an aggrieved party would have to anticipate that there would be no modification of the decision.

Mr. PASTORE. Madam President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. PASTORE. In a judicial proceeding, on a motion for a new trial, the matter would go back to the trial judge. This proposal changes that proceeding. I think it is a reasonable suggestion. I

am willing to take the amendment to conference. The provision merely means that, when an appeal is taken, the matter of appeal or exception will not be heard by the same person who heard the case originally. In other words, this amendment places the litigant at the advantage of not having the same person who passed on the matter originally pass on the matter of review. I am willing to take the amendment to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DIRKSEN. Madam President, I submit another amendment, which we have discussed with the Senator from Rhode Island. I understand this amendment also is agreeable.

The PRESIDING OFFICER. The amendment offered by the Senator from Illinois will be stated.

The LEGISLATIVE CLERK. It is proposed on page 8, after line 8, to insert:

(c) (1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 5(c) (1) or to the Commission, unless upon notice and opportunity for all parties to participate.

Mr. PASTORE. Madam President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. PASTORE. I understand that, as the bill is now drawn, there is serious doubt about the prohibition of ex parte contacts in adjudicatory proceedings beyond the stage of review as it applies to the Commission. This proposal takes the term "upon review" out of line 11, page 9, of the new section 409(c) (1) and makes the provision all-inclusive. It prohibits ex parte contacts at all stages.

Mr. DIRKSEN. The Senator is exactly correct.

Mr. PASTORE. I am willing to take the amendment to conference. I ask for a vote on it.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Illinois [Mr. DIRKSEN].

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2034) was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 5 of the Communications Act of 1934, as amended, is hereby repealed.

SEC. 2. Subsection (d) of section 5 of the Communications Act of 1934, as amended, is amended to read as follows:

"(c) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, and may at any time amend, modify, or rescind any such rule or order. Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, of any hearing to which such section 7(a) applies.

"(2) As used in this subsection (c) the term 'order, decision, report, or action' does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

(3) Any order, decision, report, or action made or taken, pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

"(4) Any person aggrieved by any such order, decision, report, or action, may an application for review by the Commission, within such time and in such manner as the Commission shall prescribe. The Commission shall have authority on its own initiative to order any matters delegated under paragraph (1) before it for review on such conditions as it shall prescribe and shall make such orders therein, consistent with law, as shall be appropriate.

"(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of Commissioners, individual Commissioner, employee board, or individual employee, has been afforded no opportunity to pass.

"(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

"(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

"(8) The Secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual Commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.

"(9) In any case in which the functions delegated by the Commission under paragraph (1) to an employee board or individual employee consist of reviewing the actions of any other employee or employees of the Commission (including examiners appointed as provided in section 11 of the Administrative Procedure Act), the Commission shall delegate such functions only to employees who by reason of their training, experience, competence, and character are especially qualified to perform such review functions, and, insofar as practicable, only

to employees who are in a grade classification or salary level equal to or higher than the employee or employees whose actions are to be reviewed."

SEC. 3. Section 405 of the Communications Act of 1934, as amended, is hereby amended to read as follows:

"REHEARINGS

"SEC. 405. After an order, decision, report, or action has been made or taken in any proceeding by the Commission or by any designated authority within the Commission pursuant to a delegation under section 5(c)(1), any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 5(c)(1), in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. A petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, with the special order of the Commission.

The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has been available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b) in any case, shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order."

SEC. 4. Section 409 (a), (b), (c), and (d) of the Communications Act of 1934, as amended, are amended to read as follows:

"(a) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons

become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

"(b) In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 5(c)(1): *Provided, however*, That such authority shall not be the same authority which made the decision to which the exception is taken.

"(c)(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 5(c)(1) or to the Commission, unless upon notice and opportunity for all parties to participate.

"(2) The provision in subsection (c) of section 5 of the Administrative Procedure Act which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

"(d) To the extent that the foregoing provisions of this section and section 5(c) are in conflict with the provisions of the Administrative Procedure Act, such provisions of this section and section 5(c) shall be held to supersede and modify the provisions of that Act."

SEC. 5. Notwithstanding the foregoing provisions of this Act, the second sentence of subsection (b) of section 409 of the Communications Act of 1934 (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act, shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) designated by the Federal Communications Commission for hearing by a notice of hearing issued prior to the date of the enactment of this Act.

SEC. 6. Section 5(c) of the Communications Act of 1934, as amended, is hereby designated section 5(d).

**MARINE SCIENCES AND RESEARCH
ACT OF 1961**

Mr. MANSFIELD. Madam President, I move that the Senate proceed to the consideration of Calendar No. 399, Senate bill 901.

The PRESIDING OFFICER. The clerk will state the bill by title.

The LEGISLATIVE CLERK. A bill (S. 901) to advance the marine sciences, to establish a comprehensive 10-year program of oceanographic research and surveys, to promote commerce and navigation, to secure the national defense, to expand ocean, coastal, and Great Lakes resources, to authorize the construction of

research and survey ships and laboratory facilities, to expedite oceanographic instrumentation, to assure systematic studies of effects of radioactive materials in marine environments, to enhance the public health and general welfare, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments.

**ORDER OF BUSINESS—EQUIPMENT
MAINTENANCE ALLOWANCE FOR
RURAL CARRIERS**

Mr. MANSFIELD. Madam President, I ask unanimous consent that the pending business be laid aside temporarily, and that the Senate proceed to the consideration of Calendar No. 594, and that the clerk call bills on the calendar, in sequence, starting with that bill.

The PRESIDING OFFICER. Is there objection? The chair hears none, and it is so ordered.

The clerk will state by title Calendar No. 594 (S. 189).

The LEGISLATIVE CLERK. A bill (S. 189) to increase the equipment maintenance allowance for rural carriers.

**MARDIROS BUDAK AND ARMENUHI
MARYAM BUDAK**

Mr. MANSFIELD. Madam President, I ask unanimous consent that Calendar No. 594, S. 189, be laid aside temporarily, and that the Senate proceed to consider Calendar No. 595, S. 427.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The bill (S. 427) for the relief of Mardiros Budak and Armenuhi Maryam Budak was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of the Immigration and Nationality Act, Mardiros Budak and Armenuhi Maryam Budak shall be held and construed to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct the required numbers from the appropriate quota or quotas for the first year that such quota or quotas are available.

MRS. CHOW CHUI HA

The bill S. 1934) for the relief of Mrs. Chow Chui Ha was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Act of September 22, 1959 (Public Law 86-363), Mrs. Chow Chui Ha shall be deemed to be within the purview of section 4 of that Act.